

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

PHEA MEN,

Appellant,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

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Case Nos. SUSP-99-0009 and DISM-99-0058

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 Hearing. These appeals came on for a consolidated hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and LEANA D. LAMB, Member. The hearing was held on November 16, November 21, and December 11, 2000 in Seattle, Washington. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in these matters.

1.2 Appearances. Appellant Phea Men was present and was represented by David Preston. Jeffrey W. Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 Nature of Appeals. These are appeals from the disciplinary sanctions of a ten-day suspension and a dismissal. Respondent suspended Appellant for inefficiency, insubordination. Respondent dismissed Appellant for poor job performance, inefficiency, incompetence, insubordination and neglect of duty.

1.4 Citations Discussed. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Plaisance v. Dep't of Social and Health Services, PAB No. D86-75 (Kent, Hrg. Exam.), aff'd by Board (1987);

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1 Countryman v. Dep't of Social and Health Services, PAB No. D94-025 (1995); Miller v. Dep't of
2 Social & Health Services, PAB No. D85-25 (Hanbey, Hrg. Exam.)(1985); Holladay v. Dep't of
3 Veteran's Affairs, PAB No. D91-084 (1992).

4 5 **II. FINDINGS OF FACT**

6 2.1 Appellant Phea Men was a Stockroom Attendant II and a permanent employee of
7 Respondent University of Washington (UW) in the Environmental Services Linen Department at
8 Harborview Medical Center (HMC). Appellant and Respondent are subject to Chapters 41.06 and
9 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a
10 timely appeal of her suspension on April 15, 1999, and a timely appeal of her dismissal on
11 November 24, 1999.

12
13 2.2 Appellant worked as a temporary Stockroom Attendant I in the linen department of HMC
14 from August 1995 through July 21, 1996. On July 22, 1996, she became a full-time Stockroom
15 Attendant II in the linen department at HMC. When she was hired as a full-time employee,
16 Appellant demonstrated her ability and competence to perform the duties of her position. She
17 demonstrated her ability to pull two carts of linen at the same time and her ability to pick up dirty
18 linen and place it in a linen cart.

19
20 2.3 Between July 22, 1996 and March 1998, Appellant had no documented incidents of poor
21 performance. The credible testimony and evidence establishes that beginning March 14, 1998,
22 Appellant received numerous verbal counselings and instructions regarding her repeated failure to
23 complete her work assignments, her continued pattern of insubordination, and her failure to follow
24 the directives of her lead and supervisor. However, she was never given a formal performance
25 evaluation.

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2 2.4 On October 23, 1998, Appellant received a letter of reprimand which put her on notice that
3 failure to correct the deficiencies in her performance could result in disciplinary action. Following
4 receipt of the letter of reprimand, Appellant continued her pattern of poor performance.

5
6 2.5 A preponderance of the credible evidence and testimony establishes that Appellant was
7 made aware of the expectations of her position and was provided feedback and instructions in the
8 correct and efficient methods of perform her assigned duties. In spite of the feedback and
9 instructions she was given, Appellant repeatedly failed to deliver exchange carts to her assigned
10 areas, failed to restock carts according to the units' "par" levels, failed to complete her assigned
11 duties, failed to remove dirty linen from the linen chute, and behaved in a rude, rebellious and
12 defiant manner toward her lead and supervisor.

13
14 2.6 When the linen chute becomes clogged, dirty linen backs up in the patient care areas. The
15 chute can become clogged when dirty linen is not removed from the linen chute. The chute can also
16 become clogged due to physical obstructions in the chute.

17
18 2.7 Estelita Quimson was the only supervisor in the HMC linen department. When Ms.
19 Quimson asked Appellant why she did not deliver all the exchange carts to her assigned areas,
20 Appellant responded that the wheels on the carts were broken. However, Ms. Quimson checked the
21 wheels on the carts and found that they were in working order.

22
23 ***Suspension***

24 2.8 On February 19, 1999, the linen department was short staffed. Ms. Quimson directed
25 Appellant and Hanh Nguyen, Appellant's lead worker, to perform some extra assignments in
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1 addition to their regularly assigned duties. Appellant did not immediately respond to Ms.
2 Quimson's directive and when she did, she refused to perform the extra duties.

3
4 2.9 Ms. Quimson saw Willie Meildon, the Director of Environmental Services and Appellant's
5 second-line supervisor, in the area of the linen room so she asked him to speak to Appellant. Mr.
6 Meildon told Appellant that she needed to follow her supervisor's instructions. When Mr. Meildon
7 left the area, Ms. Quimson asked Appellant to remain in the linen room while she called a union
8 shop steward to help her explain to Appellant the duties that she was assigned.

9
10 2.10 When union shop steward Charles Jackson arrived, he explained to Appellant that there
11 would be only two people working Appellant's shift and that she would have to do additional work.
12 Appellant asked to have the additional work put in writing. Appellant had previously stated that she
13 could not read Ms. Quimson's writing, so Ms. Quimson told Appellant to write the duties herself.
14 Appellant did not want to write the duties because she was afraid that Ms. Quimson would deny
15 that the duties she wrote were the duties she was given. Therefore, Ms. Quimson asked Ms.
16 Nguyen to put the duties in writing. Ms. Nguyen wrote out the duties and left the area briefly to
17 make a copy of the document. Mr. Jackson also left the area briefly.

18
19 2.11 Before Ms. Nguyen returned with a copy of Appellant's assigned duties, Appellant stated to
20 Ms. Quimson that she wanted to be sent home without pay. Ms. Nguyen and Mr. Jackson returned
21 to the area and Ms. Quimson repeated Appellant's request to them. Ms. Quimson told Appellant
22 that she needed to work her shift and Mr. Jackson warned her of the consequences of leaving her
23 job. Appellant left the area to go to work, but within a few minutes, she returned, threw her keys
24 and pager on a table and announced that she had a headache and wanted to see her doctor.
25 Appellant then left the area and was subsequently seen by her doctor.

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2 2.12 By memorandum dated March 26, 1999, Mr. Meildon recommended to Tomi S. Hadfield,
3 Chief Operating Officer of HMC, that Appellant be given a ten-day suspension because of her
4 continued failure to improve her behavior and performance, her refusal to follow the directives of
5 her supervisor, and her decision to leave the work area without prior authorization. Ms. Hadfield
6 agreed with the recommendation, and by letter dated March 30, 1999, Appellant was notified of her
7 ten-day suspension effective beginning April 1, 1999.

8
9 ***Dismissal***

10 2.13 Following her suspension, Appellant continued her pattern of unacceptable performance and
11 behavior. In May 1999, the linen department initiated a method of delivering linen that the hospital
12 hoped would be more cost-effective. The swing-shift staff, including Appellant, were changed to
13 the day shift. The method of delivering clean linen changed from the exchange cart system to one
14 of restocking, or "building," carts from bulk linen. From June 1 through June 3, 1999, Ms.
15 Quimson and Ms. Nguyen helped the former swing shift employees adjust to their new duties by
16 assisting them in delivering and restocking linen and in filling out the corresponding paper work.
17 On June 6, 7, and 8, 1999, Ms. Quimson personally assisted Appellant in completing her work. On
18 June 9, 1999, Ms. Quimson provided additional training to Appellant. In spite of the additional
19 training and assistance, Appellant continued to have difficulties completing her assigned work.
20 Therefore, on June 15, 16, and 17, Ms. Quimson again provided additional training to Appellant.
21 However, Appellant continued to have difficulties with completing her assigned duties.

22
23 2.14 On July 19, 1999, the linen department reverted back to the exchange cart system.
24 Appellant was assigned to a 5 a.m. to 1:30 p.m. work shift. Appellant was scheduled to exchange
25 carts from 5 a.m. to 8 a.m. On July 19, 1999, Appellant did not complete the cart exchange on time

1 and, as a result, did not complete her other duties. Other staff were required to complete
2 Appellant's work. On July 20, 1999, Appellant did not complete her assigned duties and left five
3 carts of clean linen undelivered.

4
5 2.15 On July 21, 1999, Appellant had not completed exchanging carts in her assigned areas by
6 8:00 a.m. Instead, at 10:10 a.m., Ms. Quimson found Appellant in the linen room unloading linen
7 from depleted floor carts. Ms. Quimson directed Appellant to stop what she was doing and to
8 complete delivery of her exchange carts. Appellant did not respond to Ms. Quimson's directive.
9 Ms. Quimson repeated the directive several times before Appellant finally responded. Appellant
10 asked if she could finish unloading the floor carts and Ms. Quimson told her no, that she was to
11 deliver the exchange carts. Appellant did not follow Ms. Quimson's instructions.

12
13 2.16 Ms. Quimson informed Appellant that she was insubordinate but Appellant continued to
14 unload the floor carts. Ms. Quimson then directed Appellant to get her time card and clock out.
15 Ms. Quimson told Appellant to clock out several times, but Appellant did not respond or comply.
16 Ms. Quimson then asked Ms. Nguyen to call Gary Gorsha, Systems Manager, for assistance.

17
18 2.17 Mr. Gorsha responded to the call and said he would be at the linen room in 10 minutes.
19 Before Mr. Gorsha arrived, Appellant grabbed one of the undelivered exchange carts with the
20 intention of delivering the cart in accordance with Ms. Quimson's directive. However, Ms.
21 Quimson instructed Appellant to return to the linen room.

22
23 2.18 When Appellant came back to the linen room, Ms. Quimson again instructed her to get her
24 time card and clock out, but instead, Appellant went back to unloading the floor carts. When Mr.
25 Gorsha arrived, he spoke to Ms. Quimson and then to Appellant. Mr. Gorsha clocked Appellant out

1 and placed her on administrative leave. Appellant's co-worker completed Appellant's assigned
2 duties.

3
4 2.19 Mr. Meildon left employment with HMC on October 13, 1999. Mr. Meildon was replaced
5 by Rob Carroll, Interim Director of Environmental and Linen Services. When Mr. Carroll became
6 Interim Director, he was informed that Appellant was on administrative leave. He reviewed a pre-
7 disciplinary letter drafted by Mr. Meildon, reviewed Appellant's file, asked questions of a number
8 of people familiar with the situation, and scheduled a pre-disciplinary meeting with Appellant and
9 her representative. Mr. Carroll determined that Appellant had been given plenty of opportunities to
10 change her behavior and to improve her performance and yet she had failed to do so.

11
12 2.20 As a result of Appellant's long history of inefficiency, lack of productivity, failing to follow
13 instructions and insubordination, Mr. Carroll recommended to Tomi S. Hadfield, Chief Operations
14 Officer of HMC, that Appellant be dismissed. Ms. Hadfield agreed with the recommendation and
15 by letter dated November 9, 1999, Appellant was notified of her dismissal effective November 25,
16 1999.

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18 2.21 WAC 251-11-010 requires that "[e]ach employee whose work is judged unsatisfactory shall
19 be notified in writing of the areas" of deficiencies and that "the employee shall be given an
20 opportunity to demonstrate improvement."

21
22 2.22 HMC Environmental Services Policy 3007 states in part:

23 3. Each full time or permanent part-time employee shall be evaluated annually
24 by his or her immediate supervisor. . . .

25

26 6. As part of the evaluation, action plans for areas in which the employee does
not meet the performance standards, if applicable, will be documented in writing.

2.23 UW/HMC Progressive/Corrective, Disciplinary Action manual describes the progressive discipline process. The progressive process includes informal coaching and counseling, reprimand, suspension, salary reduction, demotion and termination.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant repeatedly refused to deliver linen as instructed and asserts that Appellant's failure to perform her duties compromised the quality of patient care at HMC. Respondent argues that Appellant was given reasonable expectations and asserts that every other employee of the linen department was able to consistently meet the expectations. Respondent asserts that when she was given instructions, Appellant would say she would do things correctly but then would continue to do them her own way. Respondent also asserts that Appellant ignored her duties in regard to dirty linen removal, that she refused to perform additional duties when they were assigned to her, and that she was insubordinate, rude and insolent to her lead and supervisor. Respondent contends that for an extended period of time, HMC tried to have Appellant deliver all the linens to each unit she was assigned but that she repeatedly and deliberately failed to do so. Respondent further contends that in spite of a letter of reprimand and a suspension, Appellant continued to exhibit rude and insolent behavior and refused to perform the duties that she was assigned. Respondent asserts that Appellant was given repeated instructions and counselings and she was afforded progressive discipline but in spite of HMC's efforts to assist her, Appellant's ongoing behavior demonstrated the futility of continuing her employment.

3.2 Appellant argues that HMC failed to treat her fairly throughout the period in question, that HMC deliberately and repeatedly ignored their own personnel policies in an effort to create a hostile work environment for Appellant, and that HMC's true intent was not to help Appellant but

1 rather to get rid of her. Appellant contends that HMC failed to follow a plan of corrective discipline
2 and that she was never afforded an opportunity to respond to her alleged shortcomings. Appellant
3 contends that HMC failed to formally evaluate her performance and failed to give her timely and
4 constructive feedback on her performance. Appellant argues that her supervisor created a hostile
5 work environment, that in spite of her repeated requests for assistance, HMC failed to assist her in
6 dealing with her deteriorating relationship with her supervisor, and that HMC refused to assign her
7 to a new supervisor. Appellant further argues the HMC failed to offer her the assistance of HMC's
8 Employee Advisory Service. Appellant also argues that HMC failed to provide her with an action
9 plan outlining specific goals and timelines for improvement and never arranged for any type of
10 follow up to monitor whether she was improving her performance. Appellant contends that during
11 the disciplinary process, she was never allowed an opportunity to confront her accuser and that she
12 was not afforded an opportunity to provide her side of the events during the investigation.
13 Appellant asserts that Respondent has failed to meet its burden of proof, that its arguments are
14 based solely on circumstantial evidence and that there is no proof that the linen delivery problems
15 were somehow linked to Appellant's performance.

16 17 **IV. CONCLUSIONS OF LAW**

18 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
19 herein.

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21 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
22 the charges upon which the action was initiated by proving by a preponderance of the credible
23 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
24 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
25 Corrections, PAB No. D82-084 (1983).

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2 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
3 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
4 of Social & Health Services, PAB No. D86-119 (1987).

5
6 4.4 Inefficiency is the ineffective use of time and resources. Miller v. Dep't of Social & Health
7 Services, PAB No. D85-25 (Hanbey, Hrg. Exam.)(1985).

8
9 4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior
10 and is defined as not submitting to authority, willful disrespect or disobedience. Countryman v.
11 Dep't of Social and Health Services, PAB No. D94-025 (1995).

12
13 4.6 In regard to the suspension, Respondent has met its burden of proof that Appellant neglected
14 her duty when she refused to follow directives, failed to complete her assigned duties, and left work
15 without prior authorization. Respondent has also met its burden of proof that Appellant was
16 insubordinate. In regard to the dismissal, Respondent has met its burden of proof that Appellant
17 neglected her duty when she when she refused to follow directives, failed to deliver exchange carts
18 to her assigned areas and failed to restock carts according to the units' "par" levels. Respondent has
19 also met its burden of proof that Appellant was inefficient and insubordinate.

20
21 4.7 Incompetence presumes a lack of ability, capacity, means, or qualification to perform a
22 given duty. Plaisance v. Dep't of Social and Health Services, PAB No. D86-75 (Kent, Hrg. Exam.),
23 aff'd by Board (1987).

24
25 4.8 Respondent has failed to prove that Appellant was incompetent.

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2 4.9 In determining whether a sanction imposed is appropriate, consideration must be given to
3 the facts and circumstances including the seriousness and circumstances of the offense. The penalty
4 should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent
5 recurrence, to deter others from similar misconduct, and to maintain the integrity of the program.
6 An action does not necessarily fail if one charge is not sustained unless the entire action depends on
7 the unproven charge. Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

8
9 4.10 Under the facts and circumstances of this case, we conclude that Respondent has proven that
10 discipline is warranted. Appellant was made aware of her deficiencies verbally and was given
11 opportunities to change her behavior and to improve her performance. Respondent followed an
12 appropriate course of progressive discipline, in accordance with HMC policy. However, Appellant
13 failed to demonstrate any improvement in her behavior or performance. In addition, Respondent
14 has shown that Appellant was given notice and ample opportunity to respond to the charges during
15 the pre-disciplinary process. Appellant has shown no evidence of a hostile work environment.
16 Furthermore, Appellant has provided no rule or regulation that requires HMC to refer her to
17 Employee Advisory Services or allow her to confront her accuser.

18
19 4.11 We do not condone Respondent's failure to formally evaluate Appellant's performance.
20 Furthermore, we are concerned that Appellant was not given a written action plan to assist her in
21 improving her performance. However, considering the ongoing nature of the proven misconduct,
22 the numerous informal counselings and instructions Appellant received from her supervisor and
23 Appellant's refusal to follow the directives of her supervisor, Respondent has shown that a severe
24 disciplinary sanction is appropriate. Under the totality of the proven facts and circumstances, the

1 disciplinary sanctions of a ten-day suspension and of dismissal should be affirmed and the appeals
2 should be denied.

3

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V. ORDER

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NOW, THEREFORE, IT IS HEREBY ORDERED that the suspension appeal of Phea Men is
denied.

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IT IS HEREBY FURTHER ORDERED that the dismissal appeal of Phea Men is denied.

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DATED this _____ day of _____, 2001.

11

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Leana D. Lamb, Member

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